

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8

IN THE MATTER OF:

Libby Asbestos Site  
Export Plant  
Libby, Montana

UNILATERAL ADMINISTRATIVE  
ORDER FOR REMOVAL RESPONSE  
ACTIVITIES

U.S. EPA Region  
CERCLA  
Docket No.

W.R. Grace & Co.,  
Respondent

Proceeding Under Section  
106(a) of the Comprehensive  
Environmental Response,  
Compensation, and Liability  
Act, as amended, 42 U.S.C.  
§9606(a)

I. JURISDICTION AND GENERAL PROVISIONS

This Order is issued pursuant to the authority vested in the President of the United States by section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606(a), as amended ("CERCLA"), and delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by EPA Delegation No. 14-14-B and to the Assistant Regional Administrator, Office of Ecosystem Protection and Remediation.

This Order pertains to an approximately eleven acre property referred to as the Expansion/Export Plant (the "Export Plant") located off Highway 37 where it crosses the Kootenai River in Libby, Montana. The Export Plant is located within the Libby Asbestos Site (the "Site"), which encompasses the City of Libby, the Zonolite Mine, and associated W.R. Grace facilities and other locations in and immediately around Libby which received and/or processed vermiculite from the Zonolite Mine. This Order requires the Respondent to conduct removal actions described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

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EPA has notified the State of Montana, Department of Environmental Quality ("DEQ"), of this action pursuant to section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

## **II. PARTIES BOUND**

This Order applies to and is binding upon Respondent and Respondent's directors, officers, employees, agents, successors and assigns. Any change in ownership or corporate status of Respondent, including, but not limited to, any transfer of assets or real or personal property shall in no way alter Respondent's responsibilities under this Order.

Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Order and comply with this Order. Respondent shall be responsible for any noncompliance with this Order.

## **III. DEFINITIONS**

Unless otherwise expressly provided herein, terms used in this Order which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever the terms listed below are used in this Order or in attachments to this Order which are incorporated hereunder, the following definitions shall apply:

"Day" shall mean a calendar day, except where otherwise noted. In computing any period of time under this Order, where the last day would fall on a Saturday, Sunday, Federal or State holiday, the period shall run until the close of business of the next day.

"Respondent" shall mean W.R. Grace & Co., a Delaware corporation, and W.R. Grace & Co. - Conn, a Connecticut corporation.

"State" shall mean the State of Montana, Department of Environmental Quality.

"Work" shall mean all activities required of Respondent pursuant to the terms of this Order.

## **IV. FINDINGS OF FACT**

The Site is located in Montana, within Sections 3 and 10, T.30N., R.31W. of the Libby Quadrangle, in the county of Lincoln. Vermiculite mining at Zonolite Mountain (the "mine") was commenced by the Universal Zonolite Company in the 1920s.

Respondent purchased Universal Zonolite in 1963 and continued operations at the mine and other facilities until 1990. The vermiculite ore body on Zonolite Mountain also contained amphibole asbestos fibers of the tremolite-actinolite series (herein referred to as "amphibole asbestos"). As Respondent mined, milled and processed vermiculite, it also mined, milled and processed the amphibole asbestos associated with the vermiculite. Once beneficiated, the amphibole asbestos contaminated vermiculite product was sent to a screening facility for separation into different size grades, as well as for shipping by rail. Some of this screened product was then sent to the Export Plant for exfoliation, bagging and transportation.

The Export Plant was owned and operated by the Respondent until 1981 and was obtained by the City of Libby in the early 1990s. It is currently leased to a retail lumberyard and timber mill. The area currently contains five wood-framed buildings used to house finished and rough lumber, construction related materials, lumber milling equipment, tools and a retail center. The area also contains two former youth baseball fields which are currently unused and completely accessible to trespass.

Amphibole asbestos of the tremolite-actinolite solid solution series is a hazardous substance pursuant to section 302.4 of the National Contingency Plan ("NCP"), 40 C.F.R. § 302.4 and is present in different media at the Export Plant. EPA has sampled air and soil at the Export Plant and has found levels as high as .00113 f/cc in air and 10% by weight in soil. These samples were taken during relatively humid and quiescent weather conditions. Thus, concentrations in air may be underestimates of conditions that would exist in dry, windy weather or with worker activity. In addition, some amphibole asbestos contamination has been found on adjacent parcels of land which had been used as youth baseball fields, but are now unused. This contamination may have resulted from screened ore being staged with various other vermiculite related materials during operation of the facility between the ballfields and the Export Plant, and in a few other outlying areas.

Workers at the Export Plant are presently exposed to fibers in air, dust, soil and bulk materials left at the facility. Re-entrainment of fibers in dust and soil by vehicular and pedestrian traffic and by operational activities such as sweeping and wood milling is likely to continue unless action is taken to reduce fiber contamination at the facility. The Export Plant presently operates as a retail business, thus exposing customers and the general public to amphibole asbestos fibers. Residents, including children and the elderly, may be exposed to such fibers at adjacent recreational and residential areas. Thus, pathways of exposure from source areas at the Export Plant to human receptors are complete.

The amphibole asbestos found at the Export Plant is of respirable size and is known to induce lung cancer, mesothelioma and asbestosis upon inhalation. There is a high proportion of long (> 5 microns in length), thin fibers which evidence indicates increases toxicity. The Public Health Service and the Agency for Toxic Substance and Disease Registry have both concurred with EPA that contamination at the Export Plant presents an imminent and substantial endangerment to public health and requires governmental intervention.

#### V. CONCLUSIONS OF LAW AND DETERMINATIONS

Based on the Findings of Fact set forth above, and the Administrative Record supporting this removal action, EPA has determined that:

1. The Export Plant is a "facility" as defined by section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. The contaminant found at the Export Plant, as identified in the Findings of Fact above, is a "hazardous substance" as defined by section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. Respondent is a "person" as defined by section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent is liable under section 107(a) of CERCLA, 42 U.S.C. § 9607(a), as Respondent was the "owner and operator" of the facility at the time of disposal of the hazardous substance described in this section at the facility, as defined by section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of section 107(a)(2) of CERCLA, 42 U.S.C. Section 107(a)(2).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by sections 101(22) of CERCLA, 42 U.S.C. § 9601(22).
6. The conditions present at the Export Plant constitute an imminent and substantial endangerment to public health, welfare, or the environment. These conditions include, but are not limited to, the following:
  - a. actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances or pollutants or contaminants; this factor is present at the Export Plant due to the existence of asbestos present in air and soil;
  - b. high levels of hazardous substances or pollutants or contaminants in soils largely at or near the surface that may migrate; this factor is present at the Export Plant due to the existence of asbestos in surface soil;

- c. weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released; this factor is present at the Export Plant due to the existence of asbestos in surface soil which may be re-entrained into air by dry, windy conditions; and
- d. the (lack of) availability of other appropriate federal or state mechanisms to respond to the release.
7. The actual or threatened release of hazardous substances from the Export Plant may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of section 106(a) of CERCLA, 42 U.S.C. § 9606(a).
8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are not inconsistent with the NCP and CERCLA.

## VI. ORDER

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for the Export Plant, EPA hereby orders Respondent to comply with the following provisions, including but not limited to all attachments to this Order, all documents incorporated by reference into this Order, and all schedules and deadlines in this Order, attached to this Order, or incorporated by reference into this Order, and perform the following actions:

### 1. Notice of Intent to Comply

Respondent shall notify EPA and the State in writing within two (2) days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of the Respondent to provide such notification within this time period shall be a violation of this Order.

### 2. Designation of Contractor, Project Coordinator, and On-Scene Coordinator

Respondent shall perform the removal action or retain (a) contractor(s) to perform the removal action. Respondent shall notify EPA and the State of Respondent's qualifications or the name(s) and qualification(s) of such contractor(s) within two (2) days of the effective date of this Order. Respondent shall also notify EPA and the State of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the removal action under this Order at least two (2) days prior to commencement of such removal action. EPA retains the right to disapprove of any, or all, of the contractors and/or subcontractors retained by the Respondent, or of Respondent's choice of itself to do the removal action. If EPA disapproves of a selected contractor or Respondent, Respondent shall retain a

different contractor or notify EPA and the State that it will perform the removal action itself within two (2) days following EPA's disapproval and shall notify EPA and the State of that contractor's name or Respondent's name and qualifications within two (2) days of EPA's disapproval.

Within two (2) days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order. Respondent shall submit the designated coordinator's name, address, telephone number, and qualifications to EPA and the State. To the greatest extent possible, the Project Coordinator shall be present at the Export Plant or readily available during Export Plant work. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If EPA disapproves of a selected Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA and the State of that person's name and qualifications within two (2) days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Order shall constitute receipt by Respondent.

The EPA has designated Paul Peronard of the Region 8 Emergency Response Branch, as its On-Scene Coordinator (OSC). Respondent shall direct all submissions required by this Order to the OSC, one copy sent to Paul Peronard, EPR-SA, 999 18<sup>th</sup> Street, Suite 500, Denver, CO 80202 and one copy to Paul Peronard, 501 Mineral Avenue, Libby, Montana, 59923. All submissions shall be mailed by express mail. Notifications and submissions to the State shall be sent to Jon Constan, Remediation Division, Hazardous Waste Site Clean-up Bureau, Montana Department of Environmental Quality, 2209 Phoenix Ave., Helena, MT, 59620-0901.

### 3. Work to Be Performed

Respondent shall perform, at a minimum, the following removal action:

- 1) Temporary relocation of on-site business at the Export Plant;
- 2) Preparation of Export Plant property (e.g.-power, access roads, etc.);
- 3) Buildings and structures, if found to be contaminated, may be decontaminated if technically feasible and cost effective. If, at the discretion of the OSC, such buildings and structures cannot be adequately or cost effectively decontaminated due to the infiltration of asbestos fibers into porous surfaces or for other reasons, they must be demolished and disposed of in accordance with the Scope of Work;

- 4) Excavation of vermiculite and soil contaminated with asbestos, debris, and vermiculite;
- 5) Preparation of disposal location at the mine, or other appropriate disposal location;
- 6) Transportation and disposal of waste;
- 7) Property restoration, including re-establishment or previously relocated business; and
- 8) Implementation of institutional controls at the mine, if used for disposal pursuant to this Order.

The Work shall be performed in accordance with the EPA-approved Work Plan, which shall be incorporated by reference into this Order upon EPA approval. In addition, the Work shall be performed in accordance with the "Export Plant Schedule of Work", which is attached to, and incorporated by reference into this Order. Respondent shall retain a certified appraiser to determine values of real and personal property affected by the Work and use such appraisal to pay appropriate compensation to the owner and lessee of the Export Plant for temporary relocation and property restoration. Any such payments shall be in accordance with the temporary relocation requirements of 44 CFR § 220.

### 3.1 Work Plan and Implementation

Within five (5) business days after the effective date of this Order, the Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action set forth above. The draft Work Plan shall, at a minimum, incorporate all requirements of the Scope of Work, which is attached and incorporated by reference. It shall provide a description of, and an expeditious schedule for, the action required by this Order. This schedule shall, at a minimum, meet the deadlines established in the Export Plant Schedule of Work.

EPA, in consultation with the State, may approve, disapprove, require revisions to, or modify the draft Work Plan. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within three (3) days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as finally approved in writing by EPA in accordance with the "Export Plant Schedule of Work". Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify EPA and the State at least 48 hours prior to performing any Export Plant Work pursuant to the EPA-approved Work Plan. Respondent shall not commence or undertake any removal actions at the Export Plant without prior EPA approval. If Respondent's revisions of the draft Work Plan do not meet EPA's approval, EPA may, in

consultation with the State, unilaterally modify the Work Plan for approval.

### 3.2 Health and Safety Plan

Within five (5) days after the effective date of this Order, the Respondent shall submit for EPA and State review and comment a plan that ensures the protection of the public health and safety, including that of its on-site workers, during performance of Export Plant Work under this Order. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide, (November 1984, updated July 1988). In addition, the plan shall comply with all current applicable Occupational Safety and Health Administration (OSHA) regulations; Hazardous Waste Operations and Emergency Response; found at 29 CFR Part 1910. Respondent shall incorporate all changes to the plan recommended by EPA and implement the plan during the pendency of the removal action.

### 3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow the following documents as appropriate as guidance for QA/QC and sampling: "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures," OSWER Directive Number 9360.4-01; "Environmental Response Team Standard Operating Procedures," OSWER Directive Numbers 9360.4-02 through 9360.4-08.

Respondent shall, in sampling and analyzing air samples, use Transmission Electron Microscopy ("TEM"), recording all information as specified in the ISO 10312 method. When reporting data to EPA, information shall include at a minimum, time and duration of sampling, volume of air collected, type of sample preparation (i.e., direct or indirect), raw fiber count for all sizes of fibers and the tabulated concentration data in fibers or structures per ml. For solids analysis, Respondent shall provide data using polarized light microscopy ("PLM"). However, Respondent will use other methodologies if directed by EPA pursuant to this Order.

Upon request by EPA, Respondent shall have its laboratory(ies) analyze samples submitted by EPA for quality-assurance monitoring. Respondent shall provide to EPA and the State the quality assurance/quality control procedures followed by all sampling teams and laboratories performing data collection and/or analysis.



Respondent shall provide to EPA and the State or their authorized representatives split and/or duplicate samples of any samples collected by Respondent while performing actions under this Order. Respondent shall notify EPA and the State not less than two (2) days in advance of any sample collection activity. EPA and the State shall have the right to take any additional samples that they deem necessary.

### 3.4 Reporting

Respondent shall submit a written progress report to EPA and the State concerning actions undertaken pursuant to this Order every seventh (7th) day after the date of receipt of EPA's approval of the Work Plan until termination of this Order, unless otherwise directed by the OSC in writing. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Respondent and any Successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Export Plant, give written notice of this Order to the transferee and written notice to EPA and the State of the proposed conveyance, including the name and address of the transferee. The party conveying such an interest shall require that the transferee comply with Section VI, Paragraph 4 of this Order - Access to Property and Information.

### 3.5 Final Report

Within fifteen (15) days after completion of all removal actions required under this Order, the Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Order. This report shall also be sent to the State. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports" and with OSWER Directive No. 9360.3-03 - "Removal Response Reporting". The final report shall include a good faith estimate of total costs or statement of actual costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

4. Access to Property and Information

Respondent shall provide and/or obtain access to the Export Plant and off-Export Plant areas to which access is necessary to implement this Order and provide access to all records and documentation related to the conditions at the Export Plant and the action conducted pursuant to this Order. Such access shall be provided to EPA employees, contractors, agents, consultants, designees, representatives, and State of Montana representatives. These individuals shall be permitted to move freely at the Export Plant and appropriate off-Export Plant areas in order to conduct actions which EPA, in consultation with the State, determines to be necessary. Respondent shall submit to EPA and the State the results of all sampling or tests and all other data generated by Respondent or its contractor(s), or on the Respondent's behalf during implementation of this Order. Such sampling results shall be submitted to EPA and the State within two (2) days of receipt by Respondent.

Where action under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within five (5) days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA and the State if after using its best efforts it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the removal actions described herein, using such means as EPA deems appropriate. EPA reserves the right to seek reimbursement from Respondent for all costs and attorney's fees incurred by the United States in obtaining access for Respondent.

5. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information relating to work performed under this Order, or relating to the hazardous substances found on or released from the Export Plant, for ten years following completion of the removal actions required by this Order. At the end of this ten-year period and 30 days before any document or information is destroyed, Respondent shall notify EPA and the State that such documents and information are available to EPA and the State for inspection, and upon request, shall provide the originals or copies of such documents and information to EPA. In addition, Respondent shall

provide documents and information retained under this Section at any time before expiration of the ten year period at the written request of EPA.

Respondent may assert a business confidentiality claim pursuant to 40 C.F.R. § 2.203(b) with respect to part or all of any information submitted to EPA pursuant to this Order, provided such claim is allowed by section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). Analytical and other data specified in section 104(e)(7)(F) of CERCLA shall not be claimed as confidential by the Respondent. EPA shall only disclose information covered by a business confidentiality claim to the extent permitted by, and by means of the procedures set forth at, 40 C.F.R. Part 2, Subpart B. If no such claim accompanies the information when it is received by EPA, EPA may make it available to the public without further notice to Respondent.

Respondent shall maintain a running log of privileged documents on a document-by-document basis, containing the date, author(s), addressee(s), subject, the privilege or grounds claimed (e.g., attorney work product, attorney-client), and the factual basis for assertion of the privilege. Respondent shall keep the "privilege log" on file and available for inspection. EPA may at any time challenge claims of privilege through negotiations or otherwise as provided by law or the Federal Rules of Civil Procedure.

#### 6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-Site pursuant to this Order for treatment, storage, or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by EPA, with 42 U.S.C. § 9621(d)(3) and the EPA "Revised Procedures for Implementing Off-Site Plant Response Actions," OSWER Directive Number 9834.11, November 13, 1987. Regional Offices will provide information on the acceptability of a facility under section 121(d)(3) of CERCLA and the above directive. Prior notification of out-of-state waste shipments should be given consistent with OSWER Directive 9330.2-07.

#### 7. Compliance With Other Laws

Respondent shall perform all actions required pursuant to this Order in accordance with all applicable local; state; and federal laws and regulations except as provided in CERCLA section 121(e) and 40 C.F.R. section 300.415(i). In accordance with 40 C.F.R. § 300.415(i), all on-Site actions required pursuant to this Order shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental, state environmental, or facility siting laws. Respondent shall perform the Work in accordance with the ARARs identified in the Action Memorandum attached to this Order.

## 8. Emergency Response and Notification of Releases

If any incident, or change in Export Plant conditions, during the actions conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Export Plant or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action. The Respondent shall take these actions in accordance with all applicable provisions of this Order, including, but not limited to the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his unavailability, shall notify Steve Hawthorn at (303) 312-6061 of the incident or Export Plant conditions. If Respondent fails to take action, then EPA may respond to the release or endangerment and reserve the right to pursue cost recovery.

In addition, in the event of any release of a hazardous substance, Respondent shall immediately notify EPA's OSC and the National Response Center at telephone number (800) 424-8802, as well as the State. Respondent shall submit a written report to EPA and the State within three (3) days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, not in lieu of, reporting under CERCLA section 103(c) and section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. Sections 11001 et seq.

## VII. AUTHORITY OF THE EPA ON-SCENE COORDINATOR

The OSC shall be responsible for overseeing the proper and complete implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, 40 CFR 300.120, including the authority to halt, conduct, or direct any action required by this Order, or to direct any other removal action undertaken by EPA or Respondent at the Export Plant or on the Site. Absence of the OSC from the Export Plant shall not be cause for stoppage of work unless specifically directed by the OSC.

EPA and Respondent shall have the right to change their designated OSC or Project Coordinator. EPA shall notify the Respondent, and Respondent shall notify EPA and the State within five (5) days before such a change is made. Notification may initially be made orally, but shall be followed promptly by written notice.

## VIII. ENFORCEMENT: PENALTIES FOR NONCOMPLIANCE

Violation of any provision of this Order may subject Respondent to civil penalties of up to \$27,500 per violation per day, as provided in section 106(b)(1) of CERCLA, 42 U.S.C. §

9606(b)(1) and Pub. L. 104-134 and 40 C.F.R. Part 19. Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, EPA may perform the required actions unilaterally, pursuant to section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to section 106 of CERCLA, 42 U.S.C. § 9606.

#### **IX. RESERVATION OF RIGHTS**

Except as specifically provided in this Order, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Order, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under section 107 of CERCLA, 42 U.S.C. section 9607, for recovery of any response costs incurred by the United States related to this Order or the Export Plant and not reimbursed by Respondent.

#### **X. OTHER CLAIMS**

By issuance of this Order, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Order.

This Order does not constitute a pre-authorization of funds under section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

Nothing in this Order shall constitute a satisfaction of or release from any claim or cause of action against the Respondent or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under section 106(a) and 107(a) of CERCLA, 42 U.S.C. § 9606(a) and 9607(a).

## **XI. MODIFICATIONS**

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within five (5) days; provided, however, that the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order may only be modified in writing by signature of the Assistant Regional Administrator, Region 8 Office of Ecosystem Protection and Remediation.

If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to EPA and the State for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve the Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

## **XII. NOTICE OF COMPLETION**

When EPA determines, in consultation with the State, after EPA's review of the Final Report, that all removal actions have been fully performed in accordance with this Order, with the exception of any continuing obligations required by this Order, including, but not limited to, record retention and institutional controls, EPA will provide notice to the Respondent. If EPA, in consultation with the State, determines that any removal actions have not been completed in accordance with this Order, EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Order.

## **XIII. ACCESS TO ADMINISTRATIVE RECORD**

The Administrative Record supporting this removal action will be available for review at EPA's Libby Office and at the EPA Region VIII office in Denver within sixty (60) days after the initiation of Export Plant removal activities.

## **XIV. OPPORTUNITY TO CONFER**

Within three (3) days after issuance of this Order, Respondent may request a conference with EPA. Any such conference shall be held within two (2) days after the effective

date unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments in writing to EPA within two days of the effective date of the Order. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference, or any written submittal under this paragraph, shall be directed to Matthew Cohn, Senior Enforcement Attorney, at (303) 312-6853, or ENF-L, 999 18<sup>th</sup> Street, Suite 500, Denver, CO, 80202, respectively.

#### **XV. INSURANCE**

At least five (5) days prior to commencing any Work under this Order, the Respondent shall secure, and shall maintain for the duration of this Order, comprehensive general liability insurance and automobile insurance with limits of one million dollars, combined single limit. Within the same time period, the Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. If the Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then the Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

#### **XVI. ADDITIONAL REMOVAL ACTIONS**

If EPA, in consultation with the State, determines that additional removal actions at the Export Plant not included in an approved plan are necessary to protect public health, welfare, or the environment, EPA will notify Respondent of that determination. Unless otherwise stated by EPA, within ten (10) days of receipt of notice from EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by EPA a Work Plan for the additional removal actions. Such Work Plan shall also be provided to the State. The plan shall conform to the applicable requirements of this Order. Upon EPA's approval of the plan pursuant to Section VI, Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XI.

**XVII. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated or determined to be subject to a sufficient cause defense by the court's order.

**XVIII. EFFECTIVE DATE**

This Order shall be effective three (3) days after the Order is signed by the Assistant Regional Administrator.

**XIX. ATTACHMENTS**

The following attachments are incorporated by reference into this Order:

Attachment 1 - Request for a Time-Critical Removal Action Approval and Exemption from 12-Month, \$2-Million Statutory Limit at the Libby Asbestos Site - Export Plant and Screening Plant.

Attachment 2 - Export Plant Schedule of Work

Attachment 3 - Export Plant Scope of Work

**IT IS SO ORDERED**

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Max Dodson  
Assistant Regional Administrator  
Region 8  
U.S. Environmental Protection Agency

EFFECTIVE DATE: \_\_\_\_\_